

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

MAR 9 3 03 PM '93

DISPATCHED MM Docket No. 93-41

In re Applications of

TRIAD FAMILY NETWORK, INC.  
(hereafter "Triad")  
Winston-Salem, North Carolina  
Channel 207C3

File No. BPED-910227MD

POSITIVE ALTERNATIVE RADIO, INC.  
(hereafter "Radio")  
Asheboro, North Carolina  
Channel 207A

File No. BPED-911119MC

For Construction Permit  
for a New Noncommercial  
Educational FM Station

## HEARING DESIGNATION ORDER

Adopted: February 23, 1992;

Released: March 9, 1993

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new, noncommercial, educational FM station.<sup>1</sup>

2. *Triad*. Our engineering study based upon OST Bulletin No. 65, October, 1985 entitled "Evaluating Compliance with Specific Guidelines for Human Exposure to Radiofrequency Radiation" reveals that the ANSI radiofrequency radiation limit may be significantly exceeded in the area immediately surrounding Triad's tower base. See generally 47 C.F.R. § 1.1307(b). Consequently, we are concerned that Triad may have failed to comply with the environmental criteria set forth in the *Report and Order* in GEN Docket No. 79-163, 51 Fed. Reg. 14999 (April 12, 1986). See also *Public Notice* entitled "Further Guidance for Broadcasters Regarding Radiofrequency Radiation and

the Environment" (released January 24, 1986). Under the rules, applicants must determine whether their proposals would have a significant environmental effect under the criteria set out in 47 C.F.R. § 1.1307. If the application is determined to be subject to environmental processing under the 47 C.F.R. § 1.1307 criteria, the applicant must then submit an Environmental Assessment (EA) containing the information delineated in 47 C.F.R. § 1.1311. 47 C.F.R. § 1.1307(b) states that an EA must be prepared if the proposed operation would cause exposure exceeding specific standards to workers or to the general public. Since Triad has failed to indicate adequately how the general public or how workers engaged in maintenance and repair on the tower would be protected from exposure to levels exceeding the ANSI guidelines, it will be required to submit the environmental impact information described in 47 C.F.R. § 1.1311. See generally OST Bulletin No. 65, *supra*, at 28. Such showing should include a calculation of the total contribution of radiation from the proposal and from Stations WPIP(AM) and WBFJ(AM); it should also specify the height and the distance from the tower base of any fence that must be erected. Our calculations indicate that the fence must be at least 5 meters from the base of the tower. If Triad intends to construct the fence at a lesser distance, the showing must include the basis of the calculations (*i.e.*, antenna type, measurements, etc.). We also note that Triad's amendment of October 24, 1991 referred to a fence, but failed to specifically state the distance from the base of the tower to the fence. Accordingly, Triad will be required to file, within 30 days of the release of this Order, an EA with the presiding Administrative Law Judge. In addition, a copy shall be filed with the Chief, Audio Services Division, who will then proceed regarding this matter in accordance with the provisions of 47 C.F.R. § 1.1308. Accordingly, the comparative phase of the case will be allowed to begin before the environmental phase is completed. See *Golden State Broadcasting Corp.*, 71 FCC 2d 229 (1979), *recon. denied sub nom. Old Pueblo Broadcasting Corp.*, 83 FCC 2d 337 (1980). In the event the Mass Media Bureau determines, based on its analysis of the Environmental Assessments, that Triad's proposal will not have a significant impact upon the quality of the human environment, the contingent environmental issue shall be deleted, and the presiding judge shall thereafter not consider the environmental effects of Triad's proposal. See 47 C.F.R. § 1.1308(d).

3. *Radio*. Our engineering review of the Radio application as amended on August 10, 1992 reveals a discrepancy in the composite directional antenna radiation pattern. The August 10, 1992 amendment was submitted in order to bring the application into compliance with 47 C.F.R. § 73.316(c)(2). That section states, in pertinent part, that "[t]he plot of the pattern must be oriented such that cor-

<sup>1</sup> On August 11, 1992, Triad filed a petition to deny the Radio application. The petition to deny is essentially a petition to specify issues. Since the Commission's *Report and Order* in Gen. Docket No. 79-137, *Revised Processing of Broadcasting Applications*, 72 FCC 2d 202, 212-215 (1979), directed the deletion of all issue pleadings in pending cases, the matters sought to be raised in the petition has not been considered. Instead, an opportunity to raise any allegations contained therein will be afforded the parties post-designation pursuant to Section 1.229. Also, on November 9, 1992 and January 19, 1993, respectively, Stations WXYC(FM), Chapel Hill, North Carolina, and WSOE(FM), Elon College, North Carolina, filed essentially

identical informal objections against the Radio application. The objectors allege that the Radio application would cause interference to the current facilities of WXYC and WSOE, but they include no technical evidence to support this allegation. According to our studies, the Radio application would cause no interference to either station and thus satisfies the prohibited overlap provisions of 47 C.F.R. § 73.509. In addition, the objectors question Radio's financial qualifications but have offered no specific showing raising any substantial and material question of fact as to those qualifications. Therefore, we find the objections to be without merit.

responds to the direction of maximum radiation...." Although the amendment satisfied this requirement, it failed to include the rotation angle of the pattern with respect to True North. Based on the information included in the original application, we believe that the directional antenna pattern given in the August 10, 1992 amendment was intended to be rotated 220° with respect to True North. Accordingly, Radio must submit an amendment curing this discrepancy.

4. In addition, on February 9, 1993, Radio submitted an engineering amendment proposing to change its transmitter site. In its cover letter, Radio claims "good cause" for its post-"B" cut-off amendment. It states that, in securing "reasonable assurance" for its original WKXR(AM) site, Radio was assured, with respect to costs, that "I'll treat you right." Subsequently, Radio was informed that the site rent would be \$1200 per month, which exceeds its financial means. Because we do not find this showing sufficient to demonstrate good cause for the amendment, *see Erwin O' Conner Broadcasting Co.*, 22 FCC 2d 140, 143 (Rev. Bd. 1970), we will return the amendment.

5. *Share-time Arrangement.* None of the applicants have indicated that an attempt has been made to negotiate a share-time arrangement. Therefore, an issue will be specified to determine whether a share-time arrangement between the applicants would be the most effective use of the frequency and thus better serve the public interest. *Granfalloon Denver Educational Broadcasting, Inc.*, 43 Fed. Reg. 49560 (October 24, 1978). In the event that this issue is resolved in the affirmative, an issue will also be specified to determine the nature of such an arrangement. It should be noted that our action specifying a share-time issue is not intended to preclude the applicants, either before the commencement of the hearing or at any time during the course of the hearing, from participating in negotiations with a view toward establishing a share-time agreement among themselves.

6. *Section 307(b) and Contingent Comparative Issues.* The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to 47 U.S.C. § 307(b), which of the proposals would best provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

7. Inasmuch as it appears that there would be a significant difference in the size of the areas and populations which would receive service from the proposals, and since this proceeding involves competing applicants for noncommercial educational facilities, the standard areas and populations issue will be modified in accordance with the Commission's prior action in *New York University*, FCC 67-673, released June 8, 1967, 10 RR 2d 215 (1967). Thus, the evidence adduced under this issue will be limited to available non-commercial educational FM signals within the respective service areas.

8. *Conclusion.* Except as may be indicated by any issues specified below, the applicants are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

9. **ACCORDINGLY, IT IS ORDERED.** That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications **ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING**, at a time and place to be specified in a subsequent Order, upon the following issues:

1. If a final environmental impact statement is issued with respect to Triad in which it is concluded that the proposed facility is likely to have an adverse effect on the quality of the environment, to determine whether the respective proposal is consistent with the National Environmental Policy Act, as implemented by 47 C.F.R. §§ 1.1301-1319.

2. To determine: (a) the number of other reserved channel non-commercial educational FM services available in the proposed service area of each applicant, and the area and population served thereby; (b) whether a share-time arrangement between the applicants would result in the most effective use of the channel and thus better serve the public interest and, if so, the terms and conditions thereof; and (c) in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

3. To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), the extent to which each of the proposed operations will be integrated into the overall cultural and educational objectives of the respective applicants; and whether other factors in the record demonstrate that one applicant will provide a superior FM educational broadcast service.

4. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

10. **IT IS FURTHER ORDERED,** That, in accordance with paragraph 2 hereinabove, Triad shall submit the environmental assessment required by 47 C.F.R. § 1.1311 to the presiding Administrative Law Judge within 30 days of the release of this Order, with a copy to the Chief, Audio Services Division.

11. **IT IS FURTHER ORDERED,** That within 30 days of the release of this Order, Radio shall file the amendment specified in paragraph 3 above and serve a copy of it upon the presiding Administrative Law Judge.

12. **IT IS FURTHER ORDERED,** That the amendment filed on February 9, 1993 by Radio **IS RETURNED**.

13. **IT IS FURTHER ORDERED,** That, in accordance with note 1 hereinabove, the petition to deny filed on August 11, 1992 by Triad **IS DISMISSED**, and the informal objections filed on November 9, 1992 and January 19, 1993 by Stations WXYC(FM) and WSOE(FM), respectively, **ARE DENIED**.

14. **IT IS FURTHER ORDERED,** That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief,

Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

15. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

16. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

W. Jan Gay, Assistant Chief  
Audio Services Division  
Mass Media Bureau